

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 748 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

JAGDISHBHAI CHATURSING BALANI

Appearance:

MR DN PATEL, APP, for the appellant.

MR MJ BUDDHBHATTI for Respondents.

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 27/07/98

ORAL JUDGEMENT

Heard learned APP Mr D.N.Patel for the appellant
State and learned Advocate Mr Buddhbhatti for the
respondents.

This appeal, filed by the State, is directed
against the judgment dated 13.3.86 of the learned Addl.
Sessions Judge, Narol at Ahmedabad acquitting the

respondents in Criminal Appeal No.78/85. Initially, the respondents came to be tried before the learned 3rd Joint JD and JMFC, Narol for the offence under section 323, 324, 504, 114 of Indian Penal Code and 135(1) of the Bombay Police Act. After trial, the learned Magistrate, vide his judgment dated 4th May, 1985, convicted the respondents for offence under section 323 read with section 114 of the Indian Penal Code and the respondents were released under the Probation of Offenders Act. Against this judgment, the respondents filed Criminal Appeal No.78/85 before the Sessions Court, Narol at Ahmedabad which came to be allowed and the respondents were acquitted of the charge under section 323 read with section 114 of the Indian Penal Code. Hence this appeal.

The learned Addl. Sessions Judge, Narol, acquitted the accused-respondents observing that there was a cross case of the same incident and the learned Magistrate did not try both the cases together and hence there was prejudice to the accused-respondents inasmuch as they had no opportunity to defend and put forward the defences which were available to them on account of the cross case, like self-defence. Learned Addl. Sessions Judge also observed that there was material lacuna in the prosecution case that the Investigating Officer was not examined as witness. In these facts and circumstances, the learned Addl. Sessions Judge allowed the appeal and set aside the order of conviction passed by the learned JMFC, Narol.

On hearing both the sides and perusing the record, it clearly appears that the learned Magistrate erroneously convicted the accused under section 323 read with section 114 of the Indian Penal Code. The learned Addl. Sessions has rightly observed that non-examination of the Investigating Officer by the prosecution and since both the appeals and prosecution cases were not conducted together prejudice was caused to the accused-respondents. There is no reason to interfere with the reasoning and conclusion arrived at by the learned Addl. Sessions Judge. In this view of the matter, the appeal stands dismissed.

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